

IN THE SENATE

SENATE BILL NO. 1138

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO LOW-INCOME PROPERTIES; PROVIDING LEGISLATIVE INTENT; AMENDING CHAPTER 2, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-205A, IDAHO CODE, TO PROVIDE FOR MARKET VALUE FOR ASSESSMENT PURPOSES OF SECTION 42 LOW-INCOME PROPERTIES AND TO PROVIDE PROCEDURES; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature to establish a uniform valuation method for Section 42 low-income properties throughout Idaho. In doing so, the following are to be considered:

- (1) To ensure equitable treatment for all property owners, without creating any added favor or penalty for Section 42 low-income property owners;
- (2) To recognize recent court decisions that both tax credits and actual restricted rents must be valued under current law;
- (3) To provide fair valuations using consistent and predictable appraisal methods in valuing Section 42 low-income properties throughout the economic life of the property;
- (4) To employ the use of recognized appraisal techniques;
- (5) To give due consideration to all three approaches to values; and
- (6) To provide that the assessed valuation of Section 42 low-income property not exceed the assessed value of comparable rental housing of the same quality, condition and location not receiving Section 42 low-income tax credits.

SECTION 2. That Chapter 2, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-205A, Idaho Code, and to read as follows:

63-205A. ASSESSMENT – MARKET VALUE FOR ASSESSMENT PURPOSES OF SECTION 42 LOW-INCOME PROPERTIES. (1) Section 42 of the Internal Revenue Code and related regulations govern the housing tax credit established under the 1986 tax reform act, as amended, and provides an incentive for developers to provide safe and sanitary housing for individuals and families earning no more than sixty percent (60%) of the area median income as determined by the U.S. department of housing and urban development (HUD), which income and rent restrictions remain in place as provided for in the tax credit regulatory agreement between the owner and the Idaho housing and finance association.

(2) The market value for assessment purposes of section 42 low-income properties shall be determined by the county assessor using the following criteria:

- (a) The sales comparison approach using similar rent restricted properties, the cost approach, and the income approach, shall be considered in valuing section 42 low-income properties. The cost approach shall include an economic obsolescence factor associated

with the income and rent restrictions provided with each development's tax credit regulatory agreement with the Idaho housing and finance association. The three (3) approaches will be reconciled into a single property value.

(b) Net operating income to be capitalized in the income approach shall not include the amount of housing tax credits. However, the amount of such credits shall be added to the capitalized net operating income using one (1) of the following procedures:

(i) Except as provided in subsection (2)(b)(ii), of this section, for properties for which housing tax credits have been received prior to January 1, 2009, and for properties subject to new regulatory agreements on or after January 1, 2009, the total dollar amount of such credits shall be divided by the total number of years in the regulatory agreement;

(ii) For properties for which housing tax credits originally were received, but which are no longer receiving such credits as of January 1, 2009, no amount shall be added; or

(iii) For properties previously receiving housing tax credits, but subject to a new regulatory agreement on or after January 1, 2009, the total amount of housing tax credits pursuant to the new agreement shall be divided by the number of years in the new regulatory agreement. This amount shall supersede and be substituted for any amount previously calculated.

Net operating income shall be capitalized into value using a market derived capitalization rate. The net operating income shall be reduced by costs customary to section 42 operations, including normalized operating expenses plus all compliance, audit, asset management and other fees, but not general partner fees, as well as those costs set forth in each development's tax credit regulatory agreement with the Idaho housing and finance association.

(c) The Idaho state tax commission shall gather market data to determine market derived capitalization rates for section 42 low-income properties from section 42 property sales. Determination of the market derived capitalization rates for section 42 low-income property sales shall include both actual net operating income and calculated tax credit income consistent with the formula in subsection (2)(b) of this section. The Idaho state tax commission shall then make the information available to each county assessor. If fewer than three (3) comparable sales of section 42 low-income properties are available, then a capitalization rate derived from properties with no federal project based assistance shall be used. As used in this section, "comparable" shall mean section 42 low-income properties with no federal project based assistance. A sale of a section 42 low-income property shall not be considered as a comparable sale if the buyer of that property receives a new allocation of section 42 tax credits from the Idaho housing and finance association.

(d) Beginning in 2010, the owners of properties described in this section shall provide to the Idaho state tax commission no later than April 1 of each year, such financial statements from the prior year as are customarily prepared in the ownership and operation of any section 42 property. For 2009, said financial statements shall be provided no later than May 1. In addition, no later than May 1 of 2009 or, for new developments with housing tax credits or new allocations, by April 1 of the first year of any tax credit regulatory agreement, the Idaho housing and finance association shall provide to the Idaho state tax commission statements ascertaining the dollar amounts of housing

1 tax credits that have been allocated to each section 42 property, the year such credits
2 were first paid, and the total number of years in the regulatory agreement. The Idaho
3 state tax commission shall then make the financial statements and tax credit information
4 required under this section available to each county assessor. If such information is not
5 made available to the Idaho state tax commission and county assessors, each county shall
6 substitute market rent apartment derived expenses and income for section 42 low-income
7 properties.

8 (e) The Idaho state tax commission shall have the authority to promulgate rules dealing
9 with the enactment and enforcement of this section.

10 (f) If the use of the income approach as described in subsection (2)(b) of this section
11 results in an assessed value lower than would be obtained if the income approach in
12 subsection (2)(b) of this section were not used, the difference will be exempt.

13 SECTION 3. An emergency existing therefor, which emergency is hereby declared to
14 exist, this act shall be in full force and effect on and after its passage and approval, and
15 retroactively to January 1, 2009.